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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000276-MR

RONALD EARL WILLIAMS, JR. APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 00-CR-001844

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: STUMBO AND TAYLOR, JUDGES; HENRY,[1] SENIOR JUDGE.

HENRY, SENIOR JUDGE: On April 21, 2003, Ronald Earl Williams, Jr. entered a non-conditional plea of guilty to one count each of murder and kidnapping and to two counts of first-degree robbery, resulting from the kidnapping, robbery and murder of Keith Alexander and the robbery of Terrance Huguley. On July 10, 2003, he was sentenced to life in prison without the possibility of parole for 25

[1] Senior Judge Michael L. Henry, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

years. He appeals from the Jefferson Circuit Court's denial of his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to vacate, set aside or correct his sentence. The grounds Williams has stated for the motion are that his defense counsel was ineffective by failing to obtain a hearing to determine whether Williams was competent to enter his plea; that counsel failed to reasonably investigate his case; that the cumulative effect of counsel's errors must be considered and that the circuit court erred by failing to appoint counsel for Williams and to hold a hearing on his RCr 11.42 motion. We find no error and affirm.

As an initial matter, our review of the videotaped and written record confirms the finding of the circuit court that on its face, Williams' plea was voluntary, knowing and intelligent as required by all applicable law. Williams however alleges that his counsel was so ineffective that his plea was thereby rendered involuntary. We have explained the standard for evaluating whether Williams has carried his burden in such a review as follows:

> A showing that counsel's assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding to plead guilty has two components: (1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would

> not have pleaded guilty, but would have insisted on going to trial.

Sparks v. Commonwealth, 721 S.W.2d 726, 727-28 (Ky.App. 1986) (internal citation omitted).

In this case as in *Sparks* a jury trial was in progress when the defendant decided to accept the Commonwealth's offer and change his plea to guilty. Williams' first allegation is that his counsel was ineffective by failing to obtain a hearing to determine whether or not Williams was competent to stand trial. By Williams' own admission his competency and IQ were evaluated three times and each time Williams was found to be competent. During the first two examinations Williams was found to have an IQ below 70, but as his counsel admitted during the guilty plea colloquy, the examiner was of the opinion that each of those times Williams was malingering. On the third evaluation with an acceptable level of effort Williams was found to have an IQ of 75. The circuit court held a competency hearing on March 11, 2002, and entered an order finding Williams to be competent to stand trial based upon the court's review of records and the testimony of Dr. Simon at the hearing.

Williams' argument here seems to be that Kentucky Revised Statutes (KRS) Chapter 504 requires that he be given another competency hearing prior to his guilty plea. Williams does not refer us to the specific section of the statute upon which he relies for this proposition, and we can find none. In short this argument is devoid of merit and factually misleading. Once a defendant's mental

competency has been determined "there is no right to a continual succession of competency hearings in the absence of some new factor" reasonably indicating a need for a new hearing. *Harston v. Commonwealth,* 638 S.W.2d 700, 701 (Ky. 1982); *accord, Sanders v. Commonwealth,* 801 S.W.2d 665 (Ky. 1990). Williams has not shown the existence of any such factor here.

Williams' next argument is that his counsel rendered constitutionally ineffective assistance because he failed to adequately prepare and investigate the case, and failed to prepare Williams himself for trial. In order to establish ineffective assistance of counsel, the movant must satisfy a two-part test by showing: (1) that counsel's performance was deficient and (2) that the deficiency resulted in actual prejudice affecting the outcome. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Gall v. Commonwealth*, Ky., 702 S.W.2d 37 (1985). Establishing prejudice requires showing

> that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland, 466 U.S. at 694-95, 104 S.Ct. at 2068.

The short answer to this argument is that Williams pleaded guilty and thereby waived his ineffective assistance claims, so long as the plea was knowingly, intelligently and voluntarily made. *Quarles v. Commonwealth,* 456 S.W.2d 693 (Ky. 1970). Nevertheless we examined the record for any evidence to support Williams' allegations that his counsel failed to investigate and prepare, and

found none. The evidence of Williams' guilt was overwhelming, including Williams' statement to police admitting the shooting, the statement of Terrance Huguley, and the statement of Williams' girlfriend Kesha Pendleton, to whom he admitted that he had killed a man and taken his money. The Commonwealth intended to show that Williams robbed Huguley and Alexander because he needed money to procure an abortion for Pendleton; indeed, Pendleton said in her statement that Williams told her he had the money for the abortion after the robbery. Williams contends that his counsel failed to sufficiently investigate his claims that he shot the victim in self-defense, but no evidence supported his claim. Alexander's body was found behind the steering wheel of his car with one gunshot wound to the back of his head. The Commonwealth's witnesses had given recorded statements prior to trial, and their testimony would have been damaging and difficult to rebut. The Commonwealth was poised to portray a scenario of Williams, needing money for an abortion, kidnapping Alexander, forcing him to drive to a secluded location, robbing him and then executing him in cold blood with a pistol shot to the back of the head. With no evidence except the possibility of Williams' self-serving testimony upon which to build a self-defense case, it would be an ineffective lawyer indeed who would not advise his client of a very high likelihood of receiving the death penalty.

Given all the circumstances the record does not bear out Williams' claims that his counsel failed to adequately prepare for trial. Williams' counsel filed discovery requests and filed several motions to have Williams' competency

determined. He filed a motion to suppress Williams' statement to the police. He filed Williams' Jefferson County Public School records and other documents, and filed a motion to exclude the death penalty due to Williams' supposed low IQ and lack of competency. He and his co-counsel were ready for trial and in fact commenced the trial before Williams decided to change his plea. After the plea was entered and even after Williams had filed a bar complaint against him, at Williams' request his counsel filed and argued a motion to set aside the guilty plea, and then represented Williams at sentencing. We found nothing in this record to suggest that counsel's performance was substandard. As Williams has failed to direct us to any such proof in the record we presume that counsel's performance fell within the wide range of what is considered effective assistance. *See Baze v. Commonwealth,* 23 S.W.3d 619, 625 (Ky. 2000). There was no error.

Williams argues that if the separate errors he has alleged his counsel committed are not found to be reversible we should consider their effect in the aggregate, citing *Lindstadt v. Keane,* 239 F.3d 191 (2nd Cir. 2001) and other Federal cases. Having found no errors by counsel we need not consider this argument.

In his reply brief Williams "retracted" his claim that the trial court failed to appoint counsel to represent him on this 11.42 proceeding, saying that the claim was "inadvertent" and that what he meant to say was that the court erred by not granting an evidentiary hearing. In fact he attempted to make both claims in his brief. It appears that confusion has been caused by Williams' practice of

repeatedly filing *pro se* pleadings with the assistance of inmate legal aides while simultaneously requesting the assistance of appointed counsel. In any event the claim that the court failed to appoint counsel is false. To the contrary, the record indicates that the circuit court has, to date, never denied any of Williams' *forma pauperis* motions or his motions for appointment of counsel, and has appointed counsel for Williams on four different occasions.

Finally Williams argues that the trial court erred by failing to grant an evidentiary hearing on his RCr 11.42 motion. We have reviewed the entire record and we find no grounds to disturb the trial court's finding that both the issues raised by Williams and the voluntariness of his plea can be fully determined by reference to the record, and therefore no evidentiary hearing was required. We have discussed the issues above. Williams' demeanor on the videotape of his guilty plea gives no indication of anything amiss. When accepting the plea, the court placed Williams under oath and very carefully and patiently explained his rights and the consequences of his plea. Williams testified that his plea was voluntary, that he understood the terms of the plea and its consequences, and that he was pleading guilty because he is guilty. Neither Williams nor his counsel stated any reason why his plea should not be accepted. The terms of his plea were stated and explained to him verbally and in writing. He signed the plea papers. His demeanor at the time of his plea appeared normal. According to statements made on the videotape of the sentencing hearing Williams discussed the plea with his counsel and with family members at length before pleading guilty. Given the

charges, the evidence and the possible penalty it certainly cannot be said that pleading guilty was not a reasonable and sensible choice for Williams. If Williams' own sworn testimony and the statements of his counsel are trustworthy, then the plea was voluntary and intelligent. We find no error. *See Stanford v. Commonwealth,* 854 S.W.2d 742, 743-44 (Ky. 1993); *see also Sparks,* 721 S.W.2d at 727.

The Opinion and Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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